The Swanson Group, Inc. *and* International Union, United Plant Guard Workers of America (UPGWA) and its Local 506

Margaret Siegrist *and* The Brotherhood of Armed and Unarmed Security Guards, Party to the Contract. Cases 4–CA–20258 and 4–CA–20268

September 20, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On February 12, 1993, Administrative Law Judge Benjamin Schlesinger issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, The Swanson Group, Inc., its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We adopt the judge's findings that the Respondent unlawfully discharged employees Margaret Siegrist, Thomas Quallet, and Michael Marko because of their union activities. We note that the Respondent's answer admitted that Essie Swanson and James Koester were statutory agents and supervisors. Accordingly, we impute their knowledge of the discriminatees' union activities to John Swanson. We agree with the judge that the Respondent did hire Siegrist, Quallet, and Marko. We find it unnecessary, however, to rely on the judge's statement at fn. 12 of his decision that had the Respondent realized immediately the meaning of the ''troublemakers'' remark, it would not have hired them.

Henry R. Protas, Esq., for the General Counsel.
Steven R. Semler, Esq. (Semler & Pritzker), of Washington, D.C., for the Respondent.
Lisa S. Lane, Esq. (Gregory, Moore, Jeakle, Heinen, Ellison, & Brooks), of Detroit, Michigan, for the Charging Parties.

DECISION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BENJAMIN SCHLESINGER, Administrative Law Judge. On November 1, 1991,[1] Respondent The Swanson Group, Inc. began to provide security in Philadelphia, Pennsylvania, at the Naval Aviation Supply Office (ASO), which contracts for aircraft spare parts for the Navy and Marine Corps. The day before, the same security operations were performed by Selective (also known as Select or Selected) Investigation Services (SIS). The unfair labor practice complaint alleges that Respondent was SIS's successor and that it refused to bargain with International Union, United Plant Guard Workers of America (UPGWA) and its Local 506 (Local 506; UPGWA and Local 506 collectively the Union), the labor organization that had a collective-bargaining agreement with SIS. Instead, it quickly signed an agreement with another union, The Brotherhood of Armed and Unarmed Security Guards (Brotherhood), and terminated the employment of three of its employees because of their union activities. Respondent denies that it violated the National Labor Relations Act, 29 U.S.C. § 151 et seq., in any respect.[2]

Respondent admits that it is subject to the jurisdiction of the Board. It is a corporation with an office and principal place of business in Annandale, Virginia, where it has been engaged in providing security services at four facilities in the United States, including ASO. During 1991 it provided services in excess of $50,000 to customers located outside Virginia. I conclude that Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act. I also conclude that the UPGWA, Local 506, and the Brotherhood are labor organizations within the meaning of Section 2(5) of the Act.

The security work at ASO has been performed by civilians and was contracted out by the Navy. The contractor before SIS was Old Dominion Security, Inc., which had signed a collective-bargaining agreement with the Union covering the following unit which was appropriate for bargaining within the meaning of Section 9(b) of the Act:

> INCLUDED: All full-time and regular part-time security officers, including security sergeants employed by Old Dominion Security, Inc. at the Navy Aviation Supply Office located at 700 Robbins Avenue, Philadelphia, Pennsylvania.
>
> EXCLUDED: All other employees, lieutenants, professional employees, office clerical employees, and supervisors as defined in the Act.

SIS succeeded to this contract, which expired by its terms on October 31, 1992. Before SIS's contract with the Navy reached its termination date, Respondent bid for the work and was awarded the contract. The Navy notified it of SIS's collective-bargaining agreement with the Union. Respondent hired almost all of SIS's employees and, beginning on November 1, supplied security services at ASO, in the very same manner as SIS did. On that date, Respondent employed 29 persons, only 3 of whom had not previously been employed by SIS. Even with the addition of six new employees by November 5, the vast majority of its employees had been employed by SIS. That meets the first of the two tests for

[1] All dates refer to the year 1991 unless otherwise indicated.

[2] The relevant docket entries are as follows: The charge in Case 4–CA–20258 was filed by the Union on November 18, and the charge in Case 4–CA–20268 was filed by Margaret Siegrist on November 21. The complaint issued on March 25, 1992, and was amended at the hearing, which was held in Philadelphia, Pennsylvania, on August 3–4, 1992.

successorship, as found by the Supreme Court in *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987), citing, inter alia, *NLRB v. Burns Security Services*, 406 U.S. 272, 280–281 fn. 4 (1972); *Capitol Steel Co.*, 299 NLRB 484, 486 (1990). The second test is whether the similarities between the two operations manifest a ''substantial continuity' between the enterprises.'' Ibid. Thus, the question is ''whether 'those employees who have been retained will . . . view their jobs as essentially unaltered.''' *Fall River* at 43, quoting *Golden State Bottling Co. v. NLRB*, 414 U.S. 168, 184 (1973). On November 1, Respondent provided the same services as were provided by SIS the day before. There was not only a ''substantial continuity'' but almost a complete continuity of operations, under the criteria set forth in *Border Steel Rolling Mills*, 204 NLRB 814 (1973). Respondent admitted that the following unit is appropriate for bargaining:

> All full time and regular part time security officers employed by The Swanson Group, Inc. at the Naval Aviation Supply Office located in Philadelphia, Pennsylvania, excluding all other employees, managerial and administrative employees and supervisors as defined in the Act.

Accordingly, Respondent had a duty to recognize and bargain with the Union about those employees' terms and conditions of employment. *Burns*, supra at 278–279.

There is ample proof that the Union attempted to contact Respondent in an effort to request it to bargain. On November 1, Dennis Eck, president of Local 506 and an International representative, telephoned the jobsite and spoke to Essie Swanson,[3] Respondent's vice president and sister of Respondent's president, John Swanson, III. Eck told her that he wanted to negotiate a contract, but she said that her brother was in charge of those business dealings. She gave him an address in Springfield, Virginia, but refused to give him an office telephone number. Within the next day or so, Eck received John's telephone number from Michael Nolan, ASO's director of security; but, when Eck tried that number, the call was answered that the number had been disconnected or changed. He then started to telephone Essie daily, on November 3–6. He repeatedly asked to speak with someone who had the authority to negotiate a collective-bargaining agreement. Once, on November 5, in reply to Eck's request that Respondent bargain with the Union, Essie told him that John was going to be at meetings the next several days and hung up. Eck also began to write letters. Most of his letters, which were dated November 3, 8, 15, and 25, December 6 and 16, 1991, and May 6 and 20, 1992, sent by certified mail, were either rejected or not picked up at the post office. The sole exception was the delivery of the November 3 letter, which was also mailed to James Koester, Respondent's project manager and an admitted supervisor, at ASO's address. Koester did not deny the receipt of that letter, which is evidenced by a signed return receipt for certified mail, dated November 6. None of Eck's letters received any response.

That there was no response from the Union can be attributed to several peculiar rules by which, John testified, he conducted his business. The first was that the telephone number of his office would not be made available. Another was that he would not accept any mail at one of the military facilities where he provided security. Another was that he would not accept certified and registered mail at his Virginia office, because he worked late hours and he could not afford the time to go to the post office to pick up his mail. It is for these reasons that Respondent and, in particular, John, sought to persuade me that the Union's demands were never delivered. It was only on November 9 that one of the Union's requests, a copy of its November 8 letter, was delivered, this time only because the Union had learned of Respondent's fax number.[4] The Union's demand was a typical demand for recognition and contained nothing that should have execited anyone, but John's response, received by the Union on November 12, was somewhat excited:

> [A]s a former Union Shop Steward, I noticed that the tone of your correspondence carries a demanding and threatening tone. Surely, this is not the way that your organization conducts business. Secondly, in dealing with this firm, we insist that collective bargaining agents refrain from contacting our clients if a good working relationship is to be developed. Otherwise, in like manner we will respond to such demeanor.

Obviously, John's reply demonstrates that he received the Union's demand of November 8. In addition, Eck made proper demands of Essie, a corporate officer and supervisor, on November 1 and 5; and Eck's November 3 was received by Koester. Finally, the mailing of all the Union's demands constituted proper service. Respondent cannot avoid its responsibilities merely because it rejects delivery of or refused to pick up its mail. I conclude that the Union demanded recognition and bargaining and that Respondent refused to bargain, in violation of Section 8(a)(5) of the Act.

In so concluding, I reject Respondent's defense that it had no obligation to bargain with the Union because: ''Under the Service Contract Act, which applies to [the Union's collective-bargaining agreement], 41 U.S.C. § 354 (a), *any* employer which violates any of the Act's employee payment requirements is to be debarred from receiving further government contracts, absent the existence of unusual circumstances found by the Secretary of Labor.'' Respondent's claim is that a number of the provisions of the Union's agreement violate that Act. However, the agreement was filed with the Department of Labor, and I assume that it was examined and approved. But, assuming that Respondent's claim is accurate, the Service Contract Act provides the remedy—the debarment of the *employer* from receiving further government contracts. The original contract was signed by SIS, which may have insisted on the allegedly illegal clauses. Respondent shows no reason that the Union should be disqualified from representing the employees. The old contract is not binding on Respondent as the successor employer. Respondent's only obligation is to recognize and bargain with the Union. It does not have to assume the contract. If Respondent believes that the clauses are illegal, it can negotiate a new agreement. In its bargaining, it may opt to insert provisions in the agreement that comply with the Service Contract Act and delete those provisions that it believes violate the

[3] Essie Swanson's name is misspelled in the official transcript as ''S.E.'' and ''Elise.'' The transcript is amended.

[4] Soon thereafter, Respondent changed its fax number or disconnected its machine.

statute. Finally, all the decisions cited by Respondent for refusing a union's status as a collective-bargaining representative deal with the union's own misfeasance, such as discriminating against its own members because of race or abject indifference to protecting its members' interests. They do not deal with, as here, a bilateral agreement in which a clause or two may have violated a statute.

John's reply to the Union, quoted above, is also strange, because he appears to be disturbed at the prospect of the Union's representation of his employees. He describes the Union as a ''collective bargaining agent'' and warns about its conduct to ensure the development of ''a good working relationship.'' But, according to Respondent's documentary evidence and John's testimony, he had already signed a collective-bargaining agreement with the Brotherhood, which leads to the second part of the complaint. His story was that one John Syminsky, the president of the Brotherhood, telephoned him[5] about November 4 or 5 and stated that under his union's agreement at Respondent's work location in Colts Neck, New Jersey, he had a ''selective National Recognition agreement''[6] and, under it, he chose to have Respondent recognize it at ASO. John said that he had ''no problem'' with that, and bargaining immediately ensued. How did this come about? By telephone. Syminsky, who did not testify, presented a lengthy list of demands, seemingly memorized by John, about all the things that Syminsky found unsatisfactory in the Union's contract with SIS. (How Syminsky learned of the contents of the Union's agreement was not explained.) They talked for 2 hours that day, and again the next day, for about a half hour, which culminated in an agreement. John conveniently offered to prepare the final agreement, because he had prepared the Colts Neck agreement on his computer; and he could use that computer file to write the new agreement, the terms of which were effective on November 1. He represented that the new agreement at ASO differed from the Colts Neck agreement, which Respondent did not produce, only in a few respects, one being the amount of the wages and the other being the location at which the agreement was to be effective. In any event, on November 7, before the new agreement was signed, John wrote to the ASO, advising that:

> In light of the fact that this firm has a Selective National Agreement with The Brotherhood of Armed and Unarmed Guards, and the previous Collective Bargaining Agent did not seek recognition, this office has recognized THE BROTHERHOOD OF ARMED AND UNARMED GUARDS as the Sole collective bargaining agent for the employees of this firm providing services under the referenced contract on November 1, 1991.
>
> The Brotherhood must supply us with authorization cards signed by a majority of the employees to confirm their request for recognition. We will also request an independent polling from the National Labor Relations Board. However, these actions will have no impact on the negotiated Collective Bargaining Agreement attached.

This letter is based on a lie, which is John's statement that the Union had not sought recognition. The Union had; and, although John had created as many obstacles as he could, he did not prevent Eck from talking to Essie and did not prevent Eck's letter from being received by Koester on November 6. Essie testified that on November 5, she called John and told him that Eck was trying to contact him and what he wanted. She must have told him of the first call, too. She testified that she ''check[ed] in every night to give him an update of everything that happen[ed].'' Koester, seemingly the ''trainee'' lackey, would also have immediately advised his boss that the Union was asserting its rights. Thus, having watched John, I find that he was aware, contrary to his letter to the ASO, that the Union had asked for negotiations. I also find that his testimony was completely fabricated. What really happened was that John commenced a plan to ensure that the Union, a more active labor organization than he may have been used to dealing with, would not represent his employees. The way to do that was to sign an agreement with another labor organization and interpose that other agreement to block the Union's attempt to represent Respondent's employees. The Brotherhood was the ideal vehicle. Koester was its former president and, even when he left, the organization ''was kind of falling apart.'' So, John revived it. He prepared the agreement for the Brotherhood to sign, and he wrote its terms. (It should be recalled that Syminsky, an employee at Colts Neck, could have been called by Respondent to corroborate John's testimony, but he was not. Furthermore, the Colts Neck agreement was never produced, nor was the ''National Recognition agreement,'' nor were John's notes of his ''negotiations.'') Then someone had to sign the new collective-bargaining agreement.

So, one day, according to Richard Bowen, an employee at Colts Neck, Syminsky asked Bowen to accompany him to Philadelphia. They arrived at the hotel where Essie maintained her office, and she asked them to sign the contract. They did, Syminsky, as acting president, and Bowen, as acting vice president, despite the fact that they had never been elected to office. Rather, they seem to have been self-appointed and self-designated. Bowen had never seen the contract before. Later, Essie asked them to go to the ASO to explain the contract to the employees. Koester introduced them to some of the employees—Bowen had never met any of the employees—who were not interested in the new agreement. They wanted the Union, not the Brotherhood, to represent them; and they said that Bowen and Syminsky should not be there. Even Essie conceded that the employees reacted belligerently to the idea that they were being represented by the Brotherhood.

I conclude that the entire agreement is a fraud, and John's attempt to support its integrity is so outrageously unbelievable that it reflects on all the rest of his testimony. He simply cannot be trusted, and I do not believe him at all. Even if I believed a bit of what he testified to, there is no manner in which John's entry of the agreement can be legally justified. There is no accretion (the facilities are 50 miles apart). There is no showing that the employees wanted the Brotherhood to represent them. The agreement was, pure and simple, a concoction of a conniving employer, that knew that the Union was knocking at the door and attempted to enlist the aid of a phony and dormant organization that represented no one at the ASO.

[5] How Syminsky obtained John's telephone number, in light of Eck's experience, was not explained.

[6] Respondent's attorney represented that he knew nothing of any ''National Recognition agreement.''

Because Respondent was SIS's successor and had a duty to bargain with the Union, it violated Section 8(a)(2) of the Act by recognizing and executing a collective-bargaining agreement with the Brotherhood. *American Pacific Concrete Pipe Co*., 262 NLRB 1223, 1226 (1982), enfd. mem. 709 F.2d 1514 (9th Cir. 1983). Furthermore, it is evident that the Brotherhood had no employee support at ASO. John's letter to the ASO acknowledges, and the other proof demonstrates beyond any doubt, that the agreement was written by John before there was any support for the Brotherhood, no less than the required majority that Board law requires. *Ladies' Garment Workers v. NLRB*, 366 U.S. 731, 738 (1961). Finally, the agreement contains a union-security provision. The execution of such an agreement with a union that represents no employees, no less a majority, violates Section 8(a)(3). I so conclude. *Famous Castings Corp*., 301 NLRB 404, 408 (1991). It makes no difference, as Respondent contends, that the clause was never enforced. Its mere execution and maintenance violate the Act. *Hudson River Aggregates*, 246 NLRB 192 fn. 5 (1979), enfd. 639 F.2d 865 (2d Cir. 1981).

The speed at which John felt it was necessary to sign the agreement lends support for the General Counsel's theory that Respondent discharged three employees, Margaret Siegrist, Thomas Quallet, and Michael Marko, because of their union activities. I find that John wanted no part of a labor organization that would not do his bidding, and employees who would not blindly follow his labor policies were equally threatening to him. In making this finding, I also find that Essie and Koester have no regard for the truth, but merely followed John's lead and said anything to support his wishes. To the contrary, the three employees appeared to be candid and sincere, and I credit them.[7] Finally, I note that, whenever John testified to something that could have been supported by a document, that document had either been lost or had not been considered important enough to produce at the hearing. I find that there were no such documents, because the underlying story was not a statement of fact.[8]

For these reasons, I find that Respondent discharged Siegrist, Quallet, and Marko in violation of Section 8(a)(3) and (1) of the Act. I reject Respondent's defense that they were not even hired and, if they were, they were hired by mistake. By any definition of the term, the employees were hired. Respondent took applications from all of SIS's employees, as well as others. The three were told by Essie and Koester that they were good employees. Koester told them that Respondent had ''no problem'' with hiring them, and he told them that they had been hired. Respondent sent all applicants who it felt met minimum standards to a 2-week training session. The three employees attended the training session. Even if I accepted John's testimony that this did not mean that they were hired, despite the fact that all the other employees were, John and Essie made it clear that once the applicants were given their uniforms, they were hired. All three received their uniforms.

More importantly, all three were scheduled by Koester to work. Quallet was scheduled to work on the third (midnight) shift on November 4. On arriving at work, Koester told him that Respondent did not need him anymore, but refused to give him a reason. Siegrist was scheduled to work on Friday and did not, only because Respondent had no uniforms that she could fit into. (Apparently, Respondent had uniforms only for males.) Essie gave her, however, a belt, tie clip, hat, and some other items. She was called at home on November 2 and told not to report because Respondent had still been unable to find a uniform that would fit her.[9] She reported to work on November 3, and again there was no uniform for her. Siegrist rummaged through the leftovers and found a uniform that was at least satisfactory. She worked that day, but not without first voicing her complaints that employees who had been employed for 10 years and had earned weekends off were now being assigned to work on weekends. She complained that Respondent had not considered her seniority and that she was entitled to work on the first shift. By the end of the day, Koester terminated her on the ground that she did not fit Respondent's criteria. He said that he had no problem with her, but the decision had been made by ''corporate headquarters.'' After Quallet was discharged, he called Marko and told him what had happened and that Marko was not scheduled to work on Monday, November 4; so Marko called Koester and asked whether he was scheduled to work on Monday. Koester replied, as he did to Quallet, that Marko's services were not needed because he did not fit Respondent's criteria. With these three scheduled by Respondent to work, it is obvious that all were hired.[10]

Their departure from employment was due, therefore, not to the fact that they had never been hired but to their discharge. The issue is what motivated that action. Koester never gave the employees any reason for their discharge, and, other than Respondent's defense that it never hired them, a defense that I have rejected, Respondent is silent. There are two events that I find motivated Respondent. The first occurred on October 31 when the employees reported to Essie and Koester for their uniforms and were given their work assignments. Then, Siegrist complained that the assignments had not been made according to their seniority under the union contract. She was a senior employee and entitled to have her weekends off. In addition, she wanted to be on day shift because she was the first shift union steward, and she wanted to work 40 hours a week, not 32 hours, which is what she had been assigned to. Quallet and perhaps Marko

[7] Respondent's attack on Siegrist's credibility has no merit. For example, Respondent questions her misstatement of the date that she became the union steward. However, she did not misstate anything. It is obvious that she was stating two dates, one when she became the steward of those who were employed by SIS, and the other when she was elected by those who were soon to become employed by Respondent.

[8] I am, however, making no presumptions based on Respondent's failure to comply with certain provisions of the General Counsel's subpoena. I gave Respondent the benefit of the doubt that it did not fully understand what the General Counsel was seeking by affording it the opportunity to bring certain documents to the hearing on August 5, 1992. The General Counsel elected to close the hearing on August 4 rather than permit Respondent to produce the subpoenaed documents.

[9] John claimed that on October 31 he brought to Philadelphia a list of the employees whom he had hired. If Siegrist were not on that list, as John contended, Respondent would not have been telephoning her. This is just another indication that John was not telling the truth.

[10] One of the lists prepared by Respondent shows that these employees were ''let go,'' indicating that they were hired, as opposed to those who were not ''picked up,'' or, in other words, never hired.

joined her complaints, thus identifying them as adherents of the Union that John did not want.[11]

Respondent knew of all their activities. Siegrist told Koester, after the training had begun, that she was the union steward, that Quallet worked on all schedule sheets for the union and attempted to ensure that the union complied with the law, and that Marko was an alternate steward who helped members write grievances and typed much of what the Union needed. Furthermore, John knew that the three employees were often together. That brings me to the second event: John testified that the project manager of SIS had warned him that the three were ''troublemakers'' and that they ought to be kept apart. ''Troublemakers'' is often synonymous with union activists. *Respond First Aid*, 299 NLRB 167, 169 fn. 12 (1990), enfd. mem. sub nom. *NLRB v. Plouffe & Stuff, Inc*., 940 F.2d 661 (6th Cir. 1991) . These three were the only employees who were mistakenly hired and then terminated from employment. Once John found out about Siegrist's complaints about the denial of her and others' seniority, that she was the union steward, and that she was relying on her old union contract, he must have understood the significance of the remark about them being ''troublemakers'' and realized that she and her two friends were dangerous to his plans for continuing peaceful labor relations, especially with Eck knocking on the door for union recognition.[12]

Under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Corp*., 462 U.S. 393 (1983), the General Counsel must prove that the employees' union activities motivated the employer to act as it did. Once he has met this burden of proof, the employer must demonstrate that it would have taken the same action that it did, even in the absence of the union activities. Here, the General Counsel proved his case. The timing of the discharges, shortly after Siegrist had asserted that she was the Union steward and attempted to use the union contract as protection for the employees, shows the motive for the abrupt discharge.

Respondent did not prove that there was any other fact that caused the discharges. Rather, every time that John relied on a document to support his position, and he was asked where the relevant document was, he testified that it had been lost or that he had not brought it. For example, he testified that those who were going back to work had to be trained. So, he prepared a list, but omitted placing the names of the three employees on the list. However, John no longer had the list. In any event, remarkably, even though their names were not on the list, the three employees attended the training program. When John found out about the three employees ''badgering'' Essie about their schedules and alterations to their uniforms, John then revised the list showing the names of those who should be hired to delete the names of the three employees, but John did not produce that list, either. John testified that at a meeting held to determine whom to hire at the ASO, he had a list of hiring criteria on a scratch pad. He did not produce that, either. In addition, his testimony was contradictory and internally inconsistent. For example, John claimed that Koester made a mistake by using a list of those persons entitled to carry guns as the list of those whom John had hired. John testified that he found out about the error when he heard that the three employees had complained about their uniforms. However, he also relied on the same incident as the reason that he did not hire the employees.

John's additional reason for not hiring them because they did not pass their physical training test is belied by the fact that the uniforms had been given out before the test was given. But uniforms were given only to employees who had already been hired, and thus it is obvious that the test was not a qualification for hiring. For that reason, as well as the reason that the three employees were credible witnesses and Koester was not, I find that Koester told them that they did not have to take the test. Furthermore, employees other than Siegrist, Quallet, and Marko did not take the test, but they were hired. In addition, it appears that the normal practice was, in the case of an incomplete application, for the employee to be assigned to make up for what had not been completed. Koester allegedly relied on the test that was outlined in Respondent's manual; yet, Respondent did not produce physical training test requirements from the manual, and he could not remember them. Furthermore, there is a serious question about what this test was all about. It appears that the sole physical qualification for the job was breathing. How else to explain that employees were supposed to run a mile and one-half, measured by runs around a lake; but that test was changed to three-quarters of a mile, or one run around the lake, and some employees did not run, but walked (at not too strenuous a pace) only three-quarters of a mile. An employee who was supposed to do 20 leg lifts, did 5; yet was hired. One employee passed muster, although he stood 5 feet, 6 inches tall and weighed 300 pounds. Conveniently, Respondent never produced what it alleged to be its ''height/weight standards.''

There are a few more unfair labor practices alleged in the complaint. On November 6, Siegrist attempted, on behalf of the Union, to present Respondent more than 40 grievances regarding hours of employment, insurance benefits, and employee discipline. As was customary under the SIS contract, she gave the grievances to Respondent's lieutenants, with instructions that they be turned over to Koester; and Koester never denied receiving them. On May 6, 1992, Eck sent Respondent a grievance regarding the discharge of Steve Cruz. Respondent received the latter document at ASO, but did not open it, forwarding the same to its Springfield, Virginia post office box address, where John, typically, refused to accept the document. As noted above, I find that it was validly served.

The General Counsel acknowledges that, because a successor employer is not bound by its predecessor's collective-bar-

[11] The narrations of Respondent's witnesses about this incident were not credible. Both Essie and Koester were hysterical in expanding the incident beyond its worth. They had Siegrist and the others carrying on in such a fashion complaining about the fact that Respondent would not alter their uniforms and would not give them the number of hours and schedules that they thought that their seniority required that Koester was fearful for his life. He is a 29-year old, healthy, muscular man, 5 feet, 11 inches tall, and weighs 210 pounds. I could not imagine that this security guard would be frightened by anybody else, no less a shorter and older woman and two older men. I discredit them totally, including their denial of knowledge that the employees were merely exercising their rights as union adherents and employees covered under a contract they thought still applied to them.

[12] Had John realized immediately the meaning of the ''troublemakers'' remark, he would not have hired them.

gaining agreement, Respondent was under no obligation to adhere to the strict terms of the grievance machinery established by the agreement. However, Respondent was obliged to address the grievances of its employees in the same fashion as it was obliged to recognize and bargain with the Union regarding contract negotiations. *Kenton Transfer Co*., 298 NLRB 487, 488–489 (1990); *Storall Mfg. Co*., 275 NLRB 220, 221 (1985), enfd. 786 F.2d 1169 (8th Cir. 1986). I conclude that Respondent violated Section 8(a)(5) of the Act.

The unfair labor practices found herein, occurring in connection with Respondent's business, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in numerous unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Specifically, I shall order Respondent to offer immediate and full reinstatement to Margaret Siegrist, Thomas Quallet, and Michael Marko to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of wages and other benefits they may have suffered by reason of Respondent's discrimination against them, in the manner prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I shall also order that Respondent recognize the Union as the exclusive collective-bargaining representative of its employees in the appropriate unit, and, on request, meet and bargain with the Union and discuss and process the employee grievances with the Union.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[13]

ORDER

The Respondent, The Swanson Group, Inc., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging its employees because of their union activities.

(b) Refusing to recognize and bargain collectively and in good faith with International Union, United Plant Guard Workers of America and its Local 506 as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

> All full time and regular part time security officers employed by The Swanson Group, Inc. at the Naval Aviation Supply Office located in Philadelphia, Pennsylvania, excluding all other employees, managerial and administrative employees and supervisors as defined in the Act.

(c) Refusing to discuss and process its employees' grievances with the Union.

(d) Recognizing The Brotherhood of Armed and Unarmed Security Guards as the exclusive collective-bargaining representative of its employees in the above unit, and from applying the terms and conditions of the collective-bargaining agreement that it allegedly negotiated with the Brotherhood covering that unit, unless and until the Brotherhood is certified by the National Labor Relations Board as the exclusive collective-bargaining representative for the unit, provided, however, that this should not be construed to require or permit the varying or abandoning of any provision of the agreement that increased its employees' wages and benefits over those which previously existed.

(e) Requiring as a condition of employment that its employees in the above unit become or remain members of the Brotherhood pursuant to the collective-bargaining agreement between Respondent and the Brotherhood, or otherwise extending or applying any of the provisions of the agreement or any modification, extension, or renewal thereof, to its employees, unless and until the Brotherhood has been certified by the Board as the representative of its employees in the above unit.

(f) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Margaret Siegrist, Thomas Quallet, and Michael Marko immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(b) Remove from its files any references to the unlawful discharges of Margaret Siegrist, Thomas Quallet, and Michael Marko and notify them in writing that this has been done and that the discharges will not be used against them in any way.

(c) Recognize the Union as the exclusive collective-bargaining representative of its employees in the above unit and, on request, meet and bargain with the Union concerning wages, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(d) Discuss and process its employees' grievances with the Union on its request.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its location at the Naval Aviation Supply Office in Philadelphia, Pennsylvania, copies of the attached notice

[13] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

marked ''Appendix.''[14] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discharge our employees because of their union activities.

WE WILL NOT refuse to recognize and bargain collectively and in good faith with International Union, United Plant Guard Workers of America and its Local 506 as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

> All full time and regular part time security officers employed by The Swanson Group, Inc. at the Naval Aviation Supply Office located in Philadelphia, Pennsylvania, excluding all other employees, managerial and administrative employees and supervisors as defined in the Act.

WE WILL NOT refuse to discuss and process our employees' grievances with the Union.

WE WILL NOT recognize The Brotherhood of Armed and Unarmed Security Guards as the exclusive collective-bargaining representative of our employees in the above unit, and from applying the terms and conditions of the collective-bargaining agreement that we allegedly negotiated with the Brotherhood covering that unit, unless and until the Brotherhood is certified by the National Labor Relations Board as the exclusive collective-bargaining representative for the unit, provided, however, that this should not be construed to require or permit the varying or abandoning of any provision of the agreement that increased our employees' wages and benefits over those which previously existed.

WE WILL NOT require as a condition of employment that our employees in the above unit become or remain members of the Brotherhood pursuant to the collective-bargaining agreement between us and the Brotherhood, or otherwise extending or applying any of the provisions of the agreement or any modification, extension, or renewal thereof, to our employees, unless and until the Brotherhood has been certified by the Board as the representative of our employees in the above unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

WE WILL offer Margaret Siegrist, Thomas Quallet, and Michael Marko immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

WE WILL remove from its files any references to the unlawful discharges of Margaret Siegrist, Thomas Quallet, and Michael Marko and notify them in writing that this has been done and that the discharges will not be used against them in any way.

WE WILL recognize the Union as the exclusive collective-bargaining representative of our employees in the above unit and, on request, meet and bargain with the Union concerning wages, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL discuss and process our employees' grievances with the Union on its request.

THE SWANSON GROUP, INC.